Supreme Court, U.S.
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No. 92-1476

In The

Supreme Court of the United States

October Term, 1992

E.M. SCHULZE, JR.,

Petitioner,

vs.

SOUTH MAIN BANK,

Respondent.

On Petition for Writ of Certiorari to the Texas Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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PRELIMINARY STATEMENT

Petitioner E. M. Schulze, Jr., brings this action as the last of five appeals to challenge the authority of a Texas trial court to impose sanctions against attorneys for conduct abusive of the discovery process. Petitioner was the attorney for Don Braden, a defendant to a collection suit. In addition to a sanction levied against Braden for $10,000, Petitioner was personally sanctioned for his conduct. The trial court found that the Petitioner's answers to discovery were "unreasonably frivolous, oppressive, and constitute harassment pursuant to Texas Rules of Civil Procedure 215(3)." (Tr. at 35) Petitioner argues that the trial court's ruling was improper, issued without sufficient notice and exceeded the court's authority. Respondent contends that the trial court's action was completely within its authority, and complies with the most recent Texas Supreme Court decisions on sanctions.

BACKGROUND

I. APPELLATE HISTORY

The litigation between the parties commenced in 1988 when Braden filed a strike suit against South Main Bank and others in Montgomery County, Texas. Venue of this suit was transferred in February of 1989 to Harris County, Texas, upon Respondent's motion.

Respondent took the deposition of Braden on September 20, 1988. At this deposition, Braden was very evasive, repeatedly conferred with his counsel, Schulze, (a point which the Texas Supreme Court noted with interest) and generally failed to cooperate. After the deposition was taken, Braden significantly amended his pleadings. Because of the evasive answers at the deposition, and the newly amended pleadings, Respondent sought additional facts by way of written discovery. In June of 1989, Respondent served on Braden its "Defendant's First Set of Interrogatories, Request for Production of Documents,

and Request for Admission of Facts to Plaintiff Don T. Braden." (Tr. at 45) On July 18, 1989, Braden timely served his objections and responses on Respondent. Respondent contended then, and contends to this day, that those objections and responses were frivolous and harassing. Respondent filed its "Plaintiff, South Main Bank's Motion to Compel Answers to Interrogatories, Production of Documents, and for Sanctions (hereinafter referred to as "the Sanctions Motion")." This motion clearly sought sanctions by way of its title, its body, and both specific and general prayers for relief.

After notice and more than thirty days from the filing of the Sanctions Motion, an oral hearing was held before the Honorable Daniel M. Downey, presiding in the 295th Judicial District Court of Harris County, Texas. As the docket was called, Judge Downey gave stern warnings to the lawyers for both Braden and Respondent. Judge Downey warned the lawyers that

he believed one of the parties was abusing the discovery process, and, if he had to rule on the twenty plus interrogatories at issue, he was going to sanction the offending party. These warnings were off the record, but were later placed on the record as best as each party could remember at a later hearing. Based on the warnings and direction of the Judge, the lawyers left the courtroom and attempted to settle the dispute concerning the discovery matters. Respondent urged Petitioner Schulze to reconsider his objections (as Respondent considered them to be frivolous) but Petitioner chose to maintain his objections.

Upon returning to the court, Judge Downey considered Respondent's Sanctions Motion. The court heard arguments of both counsel and ruled on the objections of Braden. Almost all of Braden's objections were overruled, and in fact, the only objections which were sustained to the interrogatories

were those which exceeded thirty questions according to the court's counting of the responses. The court concluded that both parties were "abusing the discovery process" and sanctioned both parties. A sanction of $10,000.00, payable to Respondent was imposed upon Braden. E. M. Schulze, Braden's attorney, and Petitioner herein, was ordered to perform ten hours of community service work at the Harris County Child Protective Services. (Tr. at 34-36 S.F. At 31-2)[1] It is only these community service sanctions that are before this Court.

Braden filed a Motion for Leave to File Petition for Writ of Mandamus in the Texas intermediate court of appeals, but leave was denied. The Texas Supreme Court granted leave to file the motion. The Supreme

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[1] The trial court also sanctioned counsel for Respondent for combining its discovery requests into a single document, which apparently the court found to be offensive. Counsel for Appellee was also sanctioned by the imposition of five hours mandatory community service, which has been satisfactorily performed and is not before this Court.

Court ordered that the enforcement of the sanctions be stayed until such time as Braden had an opportunity to appeal.

Subsequent to the mandamus proceedings of the Texas Supreme Court, the trial court heard Respondent's Motion for Entry of Judgment on July 9, 1991. On July 25, 1991, the trial court signed the Final Judgment from which Braden and Petitioner Schulze appealed (Tr. at 34-36) to the Court of Appeals for the Fourteenth Supreme Judicial District of Texas. The court of appeals overturned the monetary sanction against Braden, but upheld the imposition of the community service sanction against Schulze. The Texas Supreme Court refused to review the decision of the court of appeals and it was allowed to stand. Schulze then filed his Petition for Writ of Certiorari to this Court.

II. THE CIRCUMSTANCES OF THIS CASE

Petitioner argues that the trial court erred by imposing sanctions against him because the sanctions were not just or appropriate under the circumstances of this case. The Texas Supreme Court reviewed the "circumstances of this case" in the mandamus opinion, to which Respondent defers for the recitation of facts.

> South Main Bank (Respondent) loaned a limited partnership $620,000, secured by a lien on certain commercial real estate. The borrower's general partners and most or all of its limited partners, including Braden (Petitioner's client), each person personally guaranteed repayment of a portion of the loan. The part Braden guaranteed was $69,750. When the partnership became insolvent, Braden sued the Bank and others (including the bank, its president, the general partner, the accountant, appraiser, and lawyer involved in the transaction) in Montgomery County, where he resided, seeking to avoid the obligation of his guaranty and to recover actual and punitive damages on various liability theories. (Supreme Court footnote No. 2: Braden alleged causes of actions for negligence, statutory and common law fraud, violations of the Texas Deceptive Trade Practices-Consumer Protection Act and Texas

> Securities Act, breach of fiduciary duty and of the duty of good faith and fair dealing, and breach of contract.) The Bank foreclosed on its security and then sued the partnership and the guarantors in Harris County for the deficiency, alleged to be $485,767.57.

Braden v. Downey, 811 S.W.2d 922, 925 (Tex. 1991).

Respondent took the deposition of Braden. Braden was evasive and provided little or no information to assist Respondent in the defense of this matter. As the Texas Supreme Court stated:

> Braden could hardly be characterized as forthcoming in this answers to questions at his depositions, nor was his counsel's conduct there entirely professional. The deposition transcript reflects that during examination by the Bank's counsel, which lasted less than a day, Braden consulted with his attorney over sixty times. At one point, Braden's attorney objected to questions about Braden's contentions in the case, stating:
>
> Our contentions are set forth in the pleadings, and so far as I know, the only means of discovering our contentions are by Special Exceptions or by virtue of interrogatories. It's not a proper

question in a deposition.

Braden, 811 S.W.2d at 927.

The Texas Supreme Court went on to specifically discuss the discovery that was sought by Respondent, after the deposition and the responses of Braden.

> After the Bank took Braden's deposition, it directed a discovery request to Braden containing eight requests for admission of facts, five requests for production of documents, and a first set of twenty-five numbered interrogatories, one with two subparts and two with five subparts each. Braden responded by objecting to most of the interrogatories and denying most of the requests. More specifically, Braden denied: that the Bank was the owner and holder of the note signed by the partnership; that the partnership had defaulted on its note and contract obligations to the Bank; that the deficiency owed by the partnership was $485,767.57; that interest on the deficiency was accruing at the rate of 11% per annum; that Braden was liable to the Bank for the partnership's debts; and that a reasonable and necessary attorney fee to collect the debt owed by the partnership would be $48,516.76. Braden admitted only that he had signed a guaranty agreement. Each request for

admission was accompanied by an interrogatory asking Braden to "state all facts relied upon in denying the Request or objecting to it" if the request was not admitted. Braden answered the interrogatory relating to his denial that the Bank was the owner and holder of the partnership note by stating that he was not in a position to know one way or the other. To all the other interrogatories relating to denied requests for admission, Braden repeated the following objection:

> This interrogatory is objected to because it is vague, ambiguous, overly broad, non-specific, and unduly burdensome in requesting this party to "state all facts relied upon" in denying the claim. Under the Texas Rules of Civil Procedure the number of questions including subsections in a set of interrogatories shall be limited so as not to require more than thirty answers. An interrogatory requesting a party to "state all facts" in essence requests a party to state the entire substance of all testimony, documents, and other evidence which may be offered at trial. This would

> of necessity involve a narrative discourse encompassing more than thirty answers and would require the disclosure of work product.

In each instance, except for the interrogatory about attorney fees, Braden added:

> This interrogatory is also objected to because Don T. Braden has been extensively examined at deposition about these very same matters. To now inquire about these same matters in interrogatories is unduly burdensome.

Braden lodged essentially the same objections to interrogatories which asked him: to "State in detail" what banking and credit review services were to be provided the partnership; to "state all facts" supporting a conclusion that such services were not properly performed; to state the content and source of information supporting his claim that banking services rendered were deficient; and to state how he was damaged as a result. Braden also objected on the same basis to several interrogatories which requested him to state in detail the factual basis for certain of his claims, including what

misrepresentations were allegedly made by the Bank, who made them, and what was said. In response to an interrogatory which asked him to identify all persons with relevant or discoverable knowledge about the litigations, Braden stated:

> To the knowledge of this party, the only persons having knowledge of relevant matters are the parties to this lawsuit, the parties to Cause No. 89-04947, the persons mentioned in my deposition taken on September 20, 1988, and respective attorneys of the parties. The addresses and business affiliations of these persons are already known to you. To require this party to compile a list of addresses is unduly burdensome. If you should encounter difficulty in locating any of these persons, please contact my attorney and he will provide you with such information as I may have concerning the location of the person.

Braden, 811 S.W.2d at 925, 926.

After consideration of these facts, this Court will conclude, as did Judge Downey, the Court of Appeals for the Fourteenth Supreme Judicial District of Texas, and the Texas Supreme Court that the sanctions were just. Petitioner would have this Court review the sanctions as if they were imposed in a vacuum, and ignore all of the events prior to the sanctions hearing. The trial court, however, had to address this matter as it was presented. For the facts and reasons recited by the Texas Supreme Court, it is clear that the sanctions imposed by the trial court were just and appropriate under the circumstances of this case.

PETITIONER'S QUESTION PRESENTED NO. 1

Whether a judgment in a civil case directing petitioner to "work" for a governmental agency violates the Thirteenth Amendment's prohibition against involuntary servitude?

PETITIONER'S POINT OF ERROR NO. 1

The Court of Appeals erred in holding that the work order was not prohibited by the Thirteenth Amendment.

RESPONSE TO PETITIONER'S QUESTION AND POINT OF ERROR NO. 1

Petitioner Schulze avers that the actions of the trial court in imposing upon him the sanction of community service, have in fact, placed him in the

position of an indentured servant.[2] Petitioner's argument is that to require him to do any "involuntary service" is to deprive him of his freedom and results in a disguised "confinement." The argument is without merit.

Tax evaders have made this same argument for years without success. These tax cases hold that where the "involuntary servitude" arises from one's own actions, the constitution offer no protection and is not designed to interfere. The consistent holding is that since the individual received the income (which included the taxes due), but chose not to pay it, any action taken by the Internal Revenue Service is nothing more than the predictable result of their own actions. In Beltran v. Cohen, 303 F.Supp. 889,

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[2] Thirteenth Amendment, Section 1. Slavery prohibited: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

(N.D.Calif. 1969) the court held that, "the hardship stems more from the conduct of the taxpayer than from the nature of the statute." Id at 893.

In Detwiler v. United States, 406 F.Supp. 695 (E.D.Penn. 1975) the court adopted the language from Beltran and refused to find the action unconstitutional when the hardship stemmed not from the action of the agency, but from the conduct of the taxpayer.

These tax cases offer the best analogy to the instant petition. It was not the arbitrary action of the trial court which has created the Petitioner's situation. Rather, it is his own actions that have brought about the sanction. As in the tax cases, when one's own conduct is the cause of the "involuntary servitude", the protection of the constitution is not available.

PETITIONER'S QUESTION PRESENTED NO. 2

Whether it was a denial of due process to order petitioner to "work" for a governmental agency under a rule of civil procedure authorizing "such orders...as are just"?

PETITIONER'S POINT OF ERROR NO. 2

The Court of Appeals erred inholding that the Texas Rule authorizing "such orders... as are just" is not unconstitutionally vague.

RESPONSE TO PETITIONER'S QUESTION AND POINT OF ERROR NO. 2

As set forth in the lower appellate court opinion, Braden v. South Main Bank, 837 S.W.2d 733, (Tex.App.--Houston [14th Dist.] 1992, writ ref'd n.r.e.) the ordered community service is an acceptable sanction that was within the authority of the trial court to impose. This authority comes from Rule 215 2(b) of the Texas Rules of Civil Procedure and from the

inherent authority of the trial court. Petitioner argues that the imposition of a work order under either standard violates his right to due process. His argument is that to allow the trial court to impose "such orders as are just" is to allow the court to impose sanctions or penalties under an impermissibly vague standard. Petitioner is not clear how the sanction would be unconstitutional if imposed under the court's inherent power, which is not limited by the language of Rule 215 T.R.C.P.

As the court of appeals pointed out, paragraph 2(b) of Rule 215 has been reviewed in many different contexts by both the intermediate appellate courts and the Texas Supreme Court. There has been, however, no cases even suggesting that paragraph 2(b) is vague. Absent a case addressing vagueness, the 14th Court of Appeals reviewed the decisions for any case which might have found the language "such orders...as are just" ambiguous. The Court stated, "we can find

no hint that any Texas court considers "such orders...as are just" ambiguous. Braden, 837 S.W.2d at 740.

The Court went on to add that the standard has long been accepted as sufficient for reviewing the imposition of discovery sanctions and that the standard is no more vague than other legal concepts such as "abuse of discretion."

The court stated that even if it could be argued that the words "such orders....as are just" are vague in and of themselves, the Texas Supreme Court has cured any potential problems with the tests set out in Transamerican Natural Gas Corp. v. Powell, 811 S.W.2d 913 (Tex. 1991)

As set forth at greater length infra at 27, the Texas Supreme Court set forth in great detail the standards which would set the bounds of permissible sanctions under Rule 215 T.R.C.P. In conclusion, the appellate court in this matter noted that, "with such

guiding principles propounded by the Texas Supreme Court, it is impossible to say that paragraph 2(b) is unconstitutionally vague. Braden, 837 S.W.2d at 741.

Petitioner cites the Court to Grayned v. City of Rockford, 408 U.S. 104 (1972), in support of his contention. This case, and the many cited within, are clearly distinguishable from the case at bar. These cases deal with vaguely worded criminal ordinances. Each case deals with the infringement of behavior clearly protected by the First Amendment. The individuals involved were arrested and criminally prosecuted for conduct that the arresting officers determined to be violative of the ordinances in question. The defendants in Grayned, unlike Petitioner, were not given thirty-two days written notice, a hearing and a verbal warning by a judge prior to becoming subject to the allegedly offensive sanction. Finally, the language complained of by the Petitioner in the present case deals with the range of

punishment available to the trial court, not the conduct which is prohibited by the ordinace, as in Grayned, and the cases cited therein. For the above reasons, the Court's rationale in Grayned is just not applicable.

Respondent argues that the order of the court was well within its authority under both Rule 215 of the Texas Rules of Civil Procedure and the inherent authority of the court.

A. INHERENT AUTHORITY OF THE COURT

In addition to the authority granted to the trial courts by the Texas Rules of Civil Procedure, all Texas courts have inherent powers to regulate, manage and discipline the attorneys appearing before them.

This authority, which empowers a court in the State of Texas to impose sanctions upon attorneys, arises from its inherent power to manage and control the affairs of its proceedings. See Roadway Express, Inc. v. Piper, 447 US 752, 100 S.Ct. 2455, 2464 (1980). In short, the power of a court over the members of its

bar is at least as great as its authority over the litigants which appear before it. Cf. Unauthorized Practice Committee, State Bar of Texas v. Cortez, 692 S.W.2d 47, 51 (Tex. 1985). A unique symbiotic relationship exists between the courts and the attorneys in the legal professional. Id. This relationship stems from the fact that an attorney has a duty to the court as an officer of the court, Ex parte Norton, 191 S.W.2d, 713, 716 (Tex. 1946), and the court has the duty and authority to supervise the legal profession. Cortez, 692 S.W.2d at 51.

A recent United States Supreme Court decision has once again addressed the inherent authority of trial courts. In Chambers v. Nasco, Inc., _____U.S. _____, 111 S.Ct. 2123 (1991), this Court held that the promulgation of rules concerning sanctions did not limit the inherent authority of the court to sanction. Chambers, 111 S.Ct. at 135. The court went on to state that the court has the inherent authority to

impose sanctions, particularly when the sanctionable conduct arises outside of the sanctions provisions. The court added, however, that a federal court is not forbidden to sanction conduct by means of its inherent powers simply because that conduct is also subject to sanctions under the statute or the rules. Chambers, 111 S.Ct. at 2135, 36. The Chambers Court went on at great length to set forth the inherent power of the trial court, and its relationship to statutory or regulatory sanctions.

> We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses.
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> Chambers, 111 S.Ct. at 2134.

In Texas the courts' inherent power over

attorneys emanates from Tex. Const. art. 5 § 1, which provides:

> The judicial power of this state shall be vested in one Supreme Court and Courts of Appeals, and a Court of Criminal Appeals, and District Courts and County Courts, and Commissioner's Courts, and Courts of justices of the peace and in such other courts as may be provided by law.

The "judicial power" allows a court to enter such orders as are needed to regulate and discipline the parties and lawyers appearing before it.

In this case, an analogy to Respondent's order can be drawn to the power of a court to disbar an attorney practicing before it. See Scott v. State, 86 Tex. 321, 24 S.W. 789 (1894); State v. Pounds, 525 S.W.2d 547, 551 (Tex.Civ.App.--Amarillo 1975, writ ref'd n.r.e.). Prior to the adoption of the State Bar Act, Tex. Rev. Civ. Stat. Ann. Art 320a-1 (Vernon 1973) which has been recodified at Tex. Gov't. Code Ann. § 81 (Vernon 1988), each court had the unmitigated

power to disbar attorneys practicing before it. With the adoption of the State Bar Act, this specific power was regulated and displaced to a certain extent. However, the inherent powers of the court to regulate and control the attorneys appearing before it remains. Daves v. State Bar of Texas, 691 S.W.2d 784, 789 (Tex.App.--Amarillo 1985, writ ref'd n.r.e) cert. denied, 106 S.Ct. 774 (1986); cf. Cortez, 692 S.W.2d at 51. Thus, if a district judge can disbar an attorney, he surely can impose the lesser sanction of community or public service.

Federal courts have this inherent power to levy sanctions against members of the Bar which practice before it. There is no reason why the courts of the State of Texas, based upon the Texas Constitution, should not have the same powers. Similar reasoning was found in Clark v. Austin, 340 Mo. 467, 101 S.W.2d 977, 983 (1937). The Supreme Court of Missouri held that as a part of its inherent power it had the authority

to discipline or disbar attorneys for misconduct. Similarly, Judge Downey had the authority to impose community service as a sanction under his remaining inherent powers. Such a sanction is not an abuse of discretion because it is within the Court's power and deters future non-compliance with pre-trial discovery.

B. AUTHORITY UNDER RULE 215 T.R.C.P.

The second source of the Court's authority comes from the Texas Rules of Civil Procedure 215(2)(b) which stated in pertinent part in 1989 that, "the court in which the action is pending may, make such orders in regard to the failure as are just and among others the following:..." Rule 215 then provides a laundry list of available or suggested sanctions. The simple language of the rule, however, indicates that these are merely among the sanctions available to the court. The only limitation provided on the court by the terms of Rule 215 is that the orders must be just.

The Texas Supreme Court has interpreted that

rule in order to expand upon what elements are to be considered in determining if a sanction is just. In Transamerican Natural Gas Corp. v. Powell, 811 S.W.2d 913 (Tex. 1991) the Texas Supreme Court stated that determination as to whether a sanction is just is measured by two standards. First, there must be a direct relationship between the offensive conduct and the sanction imposed. Id at 917. The court went on to state that the direct relationship requires that a just sanction be directed against the abuse and toward remedying the prejudice caused the innocent party. Id at 917. Second, the sanction may not be excessive. In the words of the Texas Supreme Court, "the punishment should fit the crime." Id. The court went on to state that, "a sanction imposed for discovery abuse should be no more severe than necessary to satisfy its legitimate purposes." Id.

Those legitimate purposes are (1) to secure the party's compliance with the rules of discovery; (2) to

deter other litigants from the violating the discovery rules; and (3) to punish parties who violate the rules of discovery. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985); Jarrett v. Warhola, 695 S.W.2d 8 (Tex. App.--Houston [14th Dist.] 1985, writ ref'd); Carr V. Harris County, 745 S.W.2d 531 (Tex. App.--Houston [1st Dist.] 1988, no writ).

Respondent asserts that the trial court was clearly within its authority to sanction the Petitioner as it did, regardless of whether that authority arises from the inherent authority of the Court or from the specific granting of authority by the Texas Rules of Civil Procedure. This Court's decision in Chambers, supports this assertion.

Furthermore, when there is a bad-faith conduct in the course of litigation that could be adequately sanctioned under the rules, the Court ordinarily should rely on the rules rather than the inherent power. But if in the informed discretion of the court, neither the

statute nor the rules are up to the task, the court may safely rely on its inherent power. Chambers Id at 2134.

PETITIONER'S QUESTION PRESENTED NO. 3

Whether it was a denial of due process to order petitioner punished without his being notified in advance that he was subject to punishment and without affording him an opportunity to be heard?

PETITIONER'S POINT OF ERROR NO. 3

The Court of Appeals erred in holding that petitioner received adequate advance notice.

RESPONSE TO PETITIONER'S QUESTION AND POINT OF ERROR NO. 3

Petitioner argues that he was not given timely advance notice that the court would review his conduct for abuse of discovery. This is patently false. The pleading before the court clearly indicated even in its title that sanctions were being sought.

The concept which Petitioner wishes this Court

adopt is that litigants are under no duty to comply with

choose until such time as they are informed that the actions will be reviewed. As set forth below, Petitioner had more than adequate notice that the Sanctions Motion was filed seeking relief under Rule 215 of the Texas Rules of Civil Procedure. Most significantly, however, is the underlying proposition that no party is under any duty to comply with discovery in good faith until such time as sanctions are demanded. This is directly contrary to the lawyer's creed which the Petitioner claimed mandated his behavior, and every other authority and principle governing the practice of law in Texas.

Petitioner argues that an oral warning from the bank at the time of the hearing "to work it out" or sanctions would be imposed was insufficient as a matter of law to meet the procedural due process safeguards afforded all litigants. Petitioner is

completely ignoring the document upon which the hearing was held and the notice given prior to that hearing. That document, entitled "Plaintiff, South Main Bank's Motion to Compel Answers to Interrogatories, Production of Documents, and for Sanctions" (emphasis added) clearly put the Petitioner on notice that sanctions were being sought. Additionally, by way of its prayer, Respondent again made it clear that it was seeking sanctions pursuant to Texas Rules of Civil Procedure. That prayer requested relief pursuant to Rule 215 "Abuse of Discovery; Sanctions" and specifically Rule 215 §2(b) and Rule 215 §2(d). Additionally, Respondent made a prayer for other relief to which it may show itself justly entitled.

In Woodruff v. Cook, 721 S.W.2d 865 (Tex.App.--Dallas 1986, no writ) the court in addressing a similar situation, held that a motion's substance is not to be determined by its caption but from the body and prayer for relief. Woodruff, 721 S.W.2d at 870.

Further, the Woodruff court felt that a simple review of the plaintiff's motion and its prayer were sufficient to put the defendant on notice of the actual purpose of the hearing. *In the present case, a simple review of* the Motion, and particularly the prayer for relief, were sufficient to put Petitioner on notice that sanctions were being sought.

Respondent recognizes the duty arising out of Rule 215 to notify all parties, and that an application for sanctions or to comply discovery may only be made "upon reasonable notice to other parties and all other persons affected thereby." Rule 215(1). This burden has been met.

The Texas courts have been diligent in providing that any sanctioned attorney or litigant is provided full procedural due process. Imposing monetary sanctions against a litigant or depriving a party its opportunity to pursue or defend their case without an opportunity to be heard would violate the

basic requirements of due process. Worldwide Anesthesia Associates, Inc. v. Bryan Anesthesia, Inc., 765 S.W.2d 445, 448 (Tex.App.--Houston [14th Dist.] 1988, no writ). A number of other courts have addressed the issue of due process and held that as long as a hearing is held before the sanctions were imposed, then the due process requirement had been met. Palmer v. Cantrell, 747 S.W.2d 39 (Tex.App.--Houston [1st Dist.] 1988, no writ).

The Sanctions Motion clearly gave reasonable notice to the Petitioner that sanctions were sought, and was sent by certified mail to the Petitioners on November 16, 1989. This matter was set for a hearing and did not come before the court until December 18, 1989, some thirty-two (32) days later. Petitioner has raised no issue as to adequate notice of the Motion or of the hearing held thereon.

Thus it is clear that the Respondent met all necessary requirements in Rule 215, as well as the

standards promulgated by the Texas in enforcing the procedural due process rights of litigants.

CONCLUSION

E. M. Schulze has petitioned this Court to review the decision of the Court of Appeals for the Fourteenth Supreme Judicial District of Texas, which upheld the trial court's imposition of sanctions for conduct found to be abusive of the discovery process. Pursuant to Rule 10 of the Rules of the Supreme Court, a petition for Writ of Certiorari will be granted only when there are special and important reasons therefore. Petitioner has not met this burden. There is no important federal question, heretofore unanswered, which requires resolution by this Court. Nor has there been any holding that conflicts with the decisions of the Supreme Court.

For the reasons set forth at length above, Respondent urges this Court to find that:

1. The petition of E. M. Schulze has not raised a question of important federal law, which requires the correction of this Court; and

2. There is no lower decision in conflict with the opinions of the Supreme Court; and

3. The imposition of community service as a sanction is not prohibited by the Thirteenth Amendment; and

4. The authority of Texas court to sanction offensive conduct with "such orders ... as are just" is not unconstitutionally vague; and

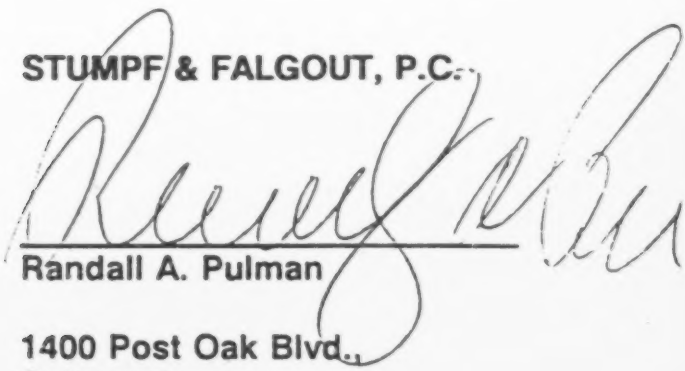
5. That the Petitioner was afforded adequate notice.

PRAYER

Respondent, South Main Bank, respectfully prays that this honorable Court deny E. M. Schulze's Petitioner for Writ of Certiorari, and be granted any and all such other relief, at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,

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